

AMENDMENT TO H.R. 29
OFFERED BY MR. STEARNS OF FLORIDA
DECEPTIVE ACTS AND PRACTICES RELATING
TO SPYWARE

Page 2, line 9, by striking “or using” and inserting “, hijacking, or otherwise using”.

Page 3, lines 1 and 2, strike “to incur unauthorized financial charges” and insert the following: “or a third party defrauded by such conduct to incur charges or other costs for a service that is not authorized by such owner or authorized user”.

Page 4, line 13, before the comma insert “or when the owner or authorized user reasonably attempts to decline the installation”.

EXCEPTION FROM IDENTITY FUNCTION RE-
QUIREMENTS

Page 12, strike line 14 and insert the following:

- 1 (2) IDENTITY FUNCTION.—
- 2 (A) IN GENERAL.—With respect only to

Page 12, line 17, before the comma insert “and subject to subparagraph (B) of this paragraph”.



Page 13, after line 2, insert the following new subparagraph:

1 (B) EXEMPTION FOR EMBEDDED ADVER-
2 TISEMENTS.—The Commission may, by regula-
3 tion, exempt from the applicability of subpara-
4 graph (A) the embedded display of any adver-
5 tisement on a Web page that contempora-
6 neously displays other information.

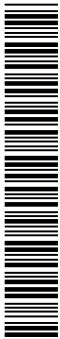
ENFORCEMENT

Strike “committed” in line 24 of page 13 and all that follows through “Act” in line 2 of page 14.

Page 15, after line 2, insert the following new subsections:

7 (c) REQUIRED SCIENTER.—Relief sought under this
8 section for any action may not be granted by the Commis-
9 sion or any court unless the Commission or court, respec-
10 tively, establishes that the action was committed with ac-
11 tual knowledge or knowledge fairly implied on the basis
12 of objective circumstances that such act is unfair or decep-
13 tive or violates this Act.

14 (d) FACTORS IN AMOUNT OF PENALTY.—In deter-
15 mining the amount of any penalty pursuant to subsection
16 (a) or (b), the court shall take into account the degree
17 of culpability, any history of prior such conduct, ability



- 1 to pay, effect on ability to continue to do business, and
- 2 such other matters as justice may require.

Page 15, line 3, strike “(c)” and insert “(e)”.

Page 15, strike lines 7 through 10 and insert the following new subsection:

- 3 (f) EFFECTIVE DATE.—To the extent only that this
- 4 section applies to violations of section 2(a), this section
- 5 shall take effect upon the expiration of the 6-month period
- 6 that begins on the date of the enactment of this Act.

REPORT ON COOKIES

Page 19, line 20, strike “tracking cookies” and insert “cookies, including tracking cookies,”.

Page 19, line 23, strike “such tracking”.

Strike “and the extent” in line 25 on page 19 and all that follows through “this Act” in line 1 on page 20, and insert the following: “and shall compare the use of cookies with the use of information collection programs (as such term is defined in section 3) to determine the extent to which such uses are similar or different”.

Page 20, line 3, strike “tracking”.

DEFINITION OF COLLECTION; EXCEPTIONS



Page 21, line 11, strike “section 3” and insert “section 3(b)(1)”.

Page 22, strike lines 8 through 22 and insert the following new subparagraphs:

1 (B) EXCEPTION.—Such term does not in-
2 clude computer software that is placed on the
3 computer system of a user by an Internet serv-
4 ice provider, interactive computer service, or
5 Internet Web site solely to enable the user sub-
6 sequently to use such provider or service or to
7 access such Web site.

8 (C) RULE OF CONSTRUCTION REGARDING
9 COOKIES.—This paragraph may not be con-
10 strued to include, as computer software, a cook-
11 ie or any other type of text or data file that
12 solely may be read or transferred by a com-
13 puter.

TECHNICAL AND CONFORMING AMENDMENTS

Page 2, lines 10 and 11, strike “protected”.

Page 4, line 6, strike “computer software compo-
nent” and insert “component of computer software”.

Page 4, lines 8 and 9, strike “computer software
component” and insert “component of computer soft-
ware”.



Page 4, lines 11 and 12, strike “a software component” and insert “such a component”.

Page 4, lines 15 and 16, strike “a computer software component” and insert “such a component”.

Page 4, line 20, strike “software component” and insert “component of computer software”.

Page 4, lines 22 and 23, strike “software component” and insert “component of computer software”.

Page 5, line 17, strike “computer software components” and insert “components of computer software”.

Page 7, line 16, strike “advertising, on” and insert “advertising on,”.

Page 8, line 5, strike “protected”.

Page 9, line 1, strike “and your computer use”.

Page 10, line 14, strike “(ii)” and insert “(iii)”.

Page 12, line 22, before “software” insert “computer”.

Page 15, line 13, strike “of this Act”.

Page 17, line 8, insert “computer” before “software”.



Page 25, line 24, strike “paragraph (1)” and insert
“subparagraph (A)”.

Page 26, at the end of line 7 insert a period.

